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7 **BEFORE THE INSURANCE COMMISSIONER**  
8 **OF THE STATE OF WASHINGTON**

9 In the Matter of the Application  
10 regarding the Conversion and  
11 Acquisition of Control of Premera Blue  
12 Cross and its Affiliates.

Docket No. G02-45

SIXTH ORDER: DENIAL OF  
MOTION TO INTERVENE OF  
CONSORTIUM OF NORTHWEST  
LAW SCHOOLS

13 On March 17, 2003, the Consortium of Northwest Law Schools (the "Consortium")  
14 filed a motion to intervene in these proceedings. The Consortium is an association of the  
15 following three laws schools: Lewis and Clark Law School of Portland, Oregon; the School of  
16 Law of Seattle University; and the School of Law of the University of Washington. The  
17 Consortium asserts that its interests should be represented in these proceedings because: (1)  
18 each School is a consumer of health care coverage and "has included Blue Cross/Blue Shield  
19 offerings in its array of benefits to students, staff, and faculty;" (2) each School is "directly  
20 involved in education concerning healthcare delivery, finance, and policy;" (3) each School  
21 has legal clinics that "represent indigents, for whom Medicaid and Medicare coverage . . . are  
22 critically important;" and (4) the Consortium members can contribute resources in health law  
23 policy, research, and advocacy. Consortium Motion to Intervene at 2, 3. In addition, the  
24 Consortium advocates that a portion of the assets of any conversion be used for the  
25 development of a "Northwest Center on Healthcare Law, Policy and Advocacy, involving the  
26 three member Law Schools in an extensive dedication of resources to the public interest in

1 effective, affordable healthcare in the Pacific Northwest.” Consortium Motion to Intervene at  
2 7-8.

3 The Consortium’s Motion to Intervene is denied for the reasons discussed below.  
4 Each reason is an independent ground for denial.

5 In the first instance, the Consortium’s Motion is untimely. Premera made its initial  
6 filing regarding its application to convert to a for-profit entity on September 17, 2002. Even  
7 prior to this first filing there was substantial publicity regarding Premera’s intentions. *See,*  
8 *e.g., Seattle Times May 31, 2002; Seattle Post-Intelligencer June 1, 2002.* The Hospital  
9 Associations, Washington Medical Association, and the Premera Watch Coalition all filed  
10 motions to intervene prior to my issuing the first procedural order in this matter. On October  
11 24, 2002, I issued a Case Management Order that set a deadline of November 26, 2002, for all  
12 motions to intervene. The Case Management Order was posted on the Office of Insurance  
13 Commissioner website, and a press release was issued publicizing the deadline. The Case  
14 Management Order also set forth a briefing schedule on the issue of intervention, which  
15 concluded on December 19, 2002. On February 10, 2003, I issued a ruling granting the  
16 motions to intervene that had been timely filed, but placed certain conditions on the  
17 Interveners.

18 The Consortium filed its Motion to Intervene almost four months after the deadline. It  
19 explains that the “delay was in part due to the complex nature of the proceedings, in part due  
20 to the care required in developing a regional approach, as well as the complexity of affiliating  
21 three Law Schools and articulating their shared interests.” Consortium Motion to Intervene at  
22 6-7. With due respect for the efforts these three educational institutions have expended to  
23 coordinate on the issue of intervention, I do not find good cause for a delay of almost four  
24 months. One or more of the Schools could have filed a motion to intervene in time for it be  
25 briefed and considered with the other timely filed motions.

1       The Consortium further argues that because there has not yet been a hearing or ruling  
2 on the merits, its delay should be excused. I do not agree. While I have not yet issued a  
3 ruling on the merits of Premera's application, I have issued five orders in this case that have  
4 addressed the hearing process, the identity of parties, conditions for intervention, and the  
5 scope of issues. The OIC Staff, Premera, and the five Intervener Groups (representing 2  
6 universities and 17 associations acting on behalf of thousands of individuals) have had  
7 discussions and been working on joint agreements regarding confidentiality, protective orders,  
8 discovery, and the hearing schedule for not only the past month, but even before I issued my  
9 ruling formally allowing the participation of the Intervener Groups. I concur with the  
10 Consortium's assessment that these proceedings are complex. As expressed in my Fourth  
11 Order, I have tried to strike a balance between an open process that allows for the expression  
12 and protection of different interests and a process that is efficient and not unduly drawn out.  
13 *See* Fourth Order: Ruling on Motions to Intervene at 3. Despite the Consortium's  
14 commitment to accept all orders and rulings made by me thus far, I have determined that  
15 permitting the Consortium to intervene at this late date is not in the interests of justice and  
16 would impair the continued orderly and prompt conduct of the proceedings. *See* RCW  
17 34.05.443.

18       As a separate, independent ground for denial of the Motion, I find that the Consortium  
19 does not have a "significant interest" that will be affected by the transaction as required for  
20 intervention under RCW 48.31C.030(4). The thrust of the Consortium's motion is a desire to  
21 advocate Northwest regional solutions to the problem of health insurance availability and  
22 affordability. To that end, it desires to present its plan in these proceedings for the creation of  
23 a Northwest Center on Healthcare Law, Policy, and Advocacy from a portion of the assets of  
24 the conversion, should the conversion be approved. However, as I ruled in the Fourth Order  
25 issued in this case, it is ultimately the responsibility of the Attorney General to approve the  
26 distribution and use of the assets of any conversion.

1 At the outset, it may be useful to discuss some of the issues raised by the  
2 interveners that are not proper subjects for this proceeding. First, I will not  
3 consider whether any particular intervenor ultimately should be a recipient of  
4 proceeds from the conversion, should it be approved. Nor will this proceeding  
5 resolve the *specifics* of the mission and operation of any foundation created for  
6 the purpose of administering the proceeds of a conversion. It is the role of the  
7 Attorney General pursuant to the Nonprofit Corporation Act, ch. 24.03 RCW,  
8 to review a plan of distribution of the assets of a dissolving nonprofit  
9 corporation. Under the law the Attorney General must approve the transfer of  
any assets and is responsible for ensuring that those assets are used for the  
public benefit or charitable purposes as required by RCW 24.03.225. My  
responsibility intersects with that of the Attorney General to the extent that I  
must ensure, if the conversion is approved, the fair value of the assets of the  
corporation is available to be used for those purposes defined by the law.  
[Fourth Order at 4.]

10 The Consortium's suggestions for the use of the proceeds of any conversion should be  
11 addressed to the Attorney General pursuant to her review under Washington's Nonprofit  
12 Corporation Act.

13 The Consortium also offers as reasons for intervention its expertise and resources  
14 based on its members' role in providing education in healthcare law and policy. While  
15 providing education on issues related to these conversion proceedings is a useful resource for  
16 any person seeking to intervene, that fact in and of itself does not constitute a "significant  
17 interest" that will be affected by the conversion of Premera. The Consortium is certainly free  
18 to offer its expertise and resources to the efforts of the five Intervener Groups.

19 The Consortium approaches the mark when it describes its members as consumers of  
20 health insurance; although, Lewis & Clark currently participates in a self-funded program and  
21 it is unclear whether the two Washington law schools offer a plan through Premera. However,  
22 based upon the information in the Form A filing and the record in this case thus far, Premera  
23 Blue Cross, a Washington nonprofit health care service contractor, does not conduct insurance  
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1 business in Oregon.<sup>1</sup> Consequently, Lewis & Clark, one of the members of the Consortium  
2 and apparently the lead member, could not contract with Premera Blue Cross for health  
3 insurance in any case. Lewis & Clark's participation in a Blue Cross/Blue Shield branded  
4 plan would had to have been through another company. The law schools of the University of  
5 Washington and Seattle University either do or could purchase a Premera Blue Cross plan.  
6 However, looking at the reasons given for intervention by the Consortium in the totality, the  
7 interests of the two Washington law schools as purchasers or potential purchasers of Premera  
8 Blue Cross insurance *as expressed in the Consortium's motion* is less than significant. There  
9 is little to no detail as to the schools' past or current relationship with Premera. I certainly  
10 intend to consider, as required under the Holding Company Act, the affect of a conversion on  
11 the insurance-buying public. I took that into account in allowing the consumer groups, who  
12 timely filed, to intervene. To the extent the Washington law schools are part of the insurance-  
13 buying public, their interests are being represented and considered in these proceedings.  
14 However, the reasons given for these three law schools to participate as a "consortium" does  
15 not persuade me that the Consortium has or represents a "significant interest" under RCW  
16 48.31C.030(4).<sup>2</sup>  
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20 <sup>1</sup> Oregon does have a regulatory interest in the Premera holding company's future  
21 business plans, because one of its subsidiaries, LifeWise Health Plan of Oregon, Inc., is a for-  
22 profit domestic company of Oregon. To the extent that the holding company's plans result in a  
23 change in control of LifeWise of Oregon, the Oregon Insurance Commissioner will review that  
24 aspect of the transaction under Oregon's Holding Company Act. However, the proposed  
conversion of the nonprofit Premera Blue Cross to a for-profit insurer implicates the regulatory  
interest of Washington and Alaska only, because it is in those states that the nonprofit operates.

25 <sup>2</sup> I will not opine on whether the two Washington laws schools could provide additional  
26 information that would satisfy me that they have in their own right a "significant interest" that  
will be affected by the conversion. Regardless, at this point, any motion to intervene by them  
would not be timely.

**WHEREFORE**, the Motion to Intervene of the Consortium of Northwest Law Schools is hereby **DENIED**.

**IT IS SO ORDERED**, this 1st day of April, 2003.

MIKE KREIDLER  
INSURANCE COMMISSIONER